IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

LEINANI DESLANDES, on Behalf of Herself and All Others Similarly Situated, Plaintiff, v. McDONALD'S USA, LLC, *et al.*, Defendants.	Civil Case No. 17-cv-04857 Judge Jorge L. Alonso Magistrate Judge M. David Weisman
STEPHANIE TURNER, on Behalf of Herself and All Others Similarly Situated, Plaintiff, v. McDONALD'S USA, LLC, *et al.*, Defendants.	Civil No. 19-cv-05524

PLAINTIFFS' OPPOSITION TO MCDONALD'S MOTION TO EXCLUDE THE REPORT AND TESTIMONY OF HAL J. SINGER, PH.D

McDonald's renewed motion to exclude the opinions and testimony of Dr. Singer (Dkt. 409) should be denied for the reasons explained in Plaintiffs' opposition to the first iteration of that motion, which Plaintiffs incorporate herein by reference. *See* Pltfs' Mem. in Opp. to Mtn. to Exclude Dr. Singer (Dkts. 325 (sealed), 326 (public)). McDonald's adds nothing to that motion here, and Dr. Singer's expert report (Dkts. 270-5 (sealed), 271-5 (public), hereafter "Singer Rept."), supplemental expert report (Dkts. 286 (sealed), 288-1 (public)), and rebuttal report (Dkts. 330-1 (sealed), 329-1 (public), hereafter "Singer Rebuttal"), easily meet the standard for admissibility.

McDonald's argues that Dr. Singer does not "define or assess" the labor markets in which Plaintiffs sold their labor but, for the reasons set out in Plaintiffs' Combined Memorandum on the competing summary judgment motions (Dkts. 400 (sealed) 399-1 (public))[1], there is no need to do more than he has done under either the *per se* rule, where McDonald's No-Hire Agreement is conclusively unlawful, or under an appropriately truncated rule of reason analysis, where the restraint is presumptively unreasonable. *See* Dkt. 400, at 2-3, 5, 15-16. Even if a full rule of reason analysis is required, there likewise is no economic need for Dr. Singer to define local geographic markets in the way McDonald's urges in order to conclude that the No-Hire Agreement resulted in nationwide wage suppression. *See id.* at 16-20. *See also* Dkt. 325 at 3 (citing Singer Rept. at ¶60; Singer Rebuttal at ¶¶50-53; Murphy Rept. at ¶17 (agreeing)). Even so, as Plaintiffs have pointed out, Dr. Singer in fact does provide the contours of relevant markets for McDonald's-trained workers, including the use of controls for national, state, county, municipal, and store-level economic data, and sufficiently accounting for dynamics potentially driven by varying local market conditions. Dkt. 325 at 5-6 (citing Singer Rept. ¶¶24-28, 53, 58-65)). McDonald's assertion that Dr. Singer does not evaluate the impact of the No-Hire Agreement on Ms. Deslandes and Ms. Turner is similarly incorrect. While their experiences illustrate how the restraint affected them, they rely on direct evidence of nationwide wage suppression found by Dr. Singer (Singer Rept. ¶¶60-62), as would be predicted by a significant

[1] Docket Entries 400 and 399-1 are Plaintiffs' Corrected Combined Memorandum of Law in Opposition to McDonald's Motion for Summary Judgment, and In Support of Plaintiffs' Cross-Motion for Summary Judgment on McDonald's Asserted Justifications. That document was originally filed at Dkts. 393 and 397, before an error in the Table of Authorities was fixed.

body of economic literature (*id*. at ¶¶11-20), and bolstered by substantial record evidence (*id*. at ¶¶24, 28-38, 65).[2]

McDonald's arguments that Dr. Singer's regressions are based on "unrepresentative" data and that his analyses are "flawed" are baseless—Dkt. 325 at 7-12; *see also* Singer Rebuttal ¶¶54-59, ¶¶62-63—but in any event present quintessential questions of the weight to be accorded the evidence, not its admissibility. *See Manpower, Inc. v. Ins. Co. of Pa*., 732 F.3d 796, 806 (7th Cir. 2013) ("Assuming a rational connection between the data and the opinion—as there was here—an expert's reliance on faulty information is a matter to be explored on cross-examination; it does not go to admissibility."). Dr. Singer tested his regression model's sensitivity by estimating separate regressions for crew and managers and for both McOpCo and franchisee store employees, and then applied a predictive model and a compensation structure model to confirm that all, or substantially all, workers nationwide (including Plaintiffs Deslandes and Turner) were injured. McDonald's can disagree with Dr. Singer and cross-examine him at trial, but his report and opinions meet the requirements for admissibility under *Daubert* and FRE 702.

McDonald's motion should be denied.

Dated: December 21, 2021

Respectfully submitted,

s/ Derek Y. Brandt

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[2] McDonald's authorities do not require more. *Agnew* addresses a plaintiff's Rule 12 stage pleading obligation to identify the "rough contours" of a relevant commercial market in an otherwise "not obviously commercial" setting. *Agnew v. Nat'l Collegiate Athletic Ass'n*, 683 F.3d 328, 345 (7th Cir. 2012). There is no dispute that McDonald's restaurant labor is an "obviously commercial" setting and, as discussed, Dr. Singer more than satisfied this standard—to the extent it even applies at the summary judgment stage. *Republic Tobacco Co. v. N. Atlantic Trading Co., Inc.*, 381 F.3d 717 (7th Cir. 2004), involved vertical, not horizontal agreements. Neither *Agnew* nor *Republic Tobacco* is a *Daubert* decision or addresses the admissibility of expert evidence.

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CERTIFICATE OF SERVICE

I, Derek Y. Brandt, an attorney, hereby certify that the foregoing **PLAINTIFFS' OPPOSITION TO MCDONALD'S MOTION TO EXCLUDE THE REPORT AND TESTIMONY OF HAL J. SINGER, PH.D** was electronically filed on December 21, 2021 and will be served electronically via the Court's ECF Notice system upon the registered parties of record.

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